

CHAPTER 1. GENERAL

1. PURPOSE. This order provides Federal Aviation Administration (FAA) policy and procedures to ensure agency compliance with the requirements set forth in the Council on Environmental Quality (CEQ) regulations for implementing the provisions of the National Environmental Policy Act of 1969 (NEPA), 40 Code of Federal Regulations (CFR) parts 1500-1508; Department of Transportation Order DOT 5610.1C, Procedures for Considering Environmental Impacts; and other related statutes and directives.

2. DISTRIBUTION. Notice of promulgation and availability of this order is distributed to the assistant/associate administrators and their office and service directors, the Chief Operating Officer and vice-presidents of the Air Traffic Organization, and the Chairs of the Environmental Network. The order should be forwarded to all division managers, facility managers, and NEPA practitioners. The order is available in electronic form only. The order will be initially located for viewing and downloading at <http://www.aee.faa.gov>. If the public does not have access to the internet, they may obtain a computer disk containing the order by contacting the Office of Environment & Energy, 800 Independence Avenue S.W., Washington D.C. 20591. If the public is not able to use an electronic version, they may obtain a photocopy of the order, for a fee, by contacting the FAA's rulemaking docket at Federal Aviation Administration, Office of the Chief Council, Attn: Rules Docket (AGC-200) - Docket No. 29797, 800 Independence Avenue SW, Washington DC 20591.

3. CANCELLATION. Order 1050.1D, Policies and Procedures for Considering Environmental Impacts, dated December 5, 1986, is cancelled.

4. BACKGROUND. NEPA and its implementing regulations, promulgated by CEQ in accordance with Executive Order (E.O.) 11514, Protection and Enhancement of Environmental Quality, March 5, 1970, as amended by E.O. 11991 (sections 2(g) and 3(h)), May 24, 1977, establish a broad national policy to protect and enhance the quality of the human environment, and develop programs and measures to meet national environmental goals. Section 101 of NEPA sets forth Federal policies and goals to encourage productive harmony between people and their environment. Section 102(2) provides specific direction to Federal agencies, sometimes called "action-forcing" provisions (40 CFR 1500.1(a), 1500.3, and 1507) on how to implement the goals of NEPA. The major provisions include the requirement to use a systematic, interdisciplinary approach (section 102(2)(A)) and develop implementing methods and procedures (section 102(2)(B)). Section 102(2)(C) requires detailed analysis for proposed major Federal actions significantly affecting the quality of the human environment, providing authority to prepare environmental impact statements (EIS).

5. SYNOPSIS OF MAJOR CHANGES. This revision:

5a. Reorganizes to consolidate all categorical exclusions, including new and modified categorical exclusions for all FAA programs, into chapter 3 while eliminating the separate appendices and their respective categorical exclusions for each program.

5b. Reorganizes to place the types of actions that normally require preparation of EA's and EIS's for all programs into Chapters 4 and 5, respectively. Appendix 6 (Airports) of Order 1050.1D (which references FAA Order 5050.4A, Airport Environmental Handbook, October 8, 1985) is now incorporated under paragraph 214 of this order. Except for the procedures for internal FAA coordination and review of environmental documents in FAA Order 5050.4A (paragraphs 63, 64, and 95), if there is a conflict between Order 1050.1E and supplemental program guidance, Order 1050.1E takes precedence.

5c. Adds Tribes to the list of government agencies consulted in extraordinary circumstances determinations when actions are likely to be highly controversial on environmental grounds based on concerns raised by a Federal, State, or local government agency, Tribe, or by a substantial number of the persons affected by the action (see paragraph 304i); likely to violate Tribal water quality standards under the Clean Water Act and Safe Drinking Water Act (see paragraph 304h), or air quality standards established under the Clean Air Act Amendments of 1990 (see paragraph 304g); or likely to be inconsistent with any Tribal law relating to environmental aspects of the proposed action or Federal responsibilities toward Tribal trust resources. Includes new guidance on government-to-government consultation with Tribes, in accordance with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, dated November 6, 2000 (65 FR 67249, November 9, 2000), and Presidential Memorandum on Government-to-Government Relations with Native American Tribal Governments, dated April 29, 1994 (59 FR 22951, May 4, 1994) (see paragraph 213). Incorporates references to tribal consultation into Appendix A, section 11 on cultural resources, in accordance with regulations governing section 106 consultation under the National Historic Preservation Act (36 CFR part 800) and compliance with the Native American Graves Protection and Repatriation Act (43 CFR part 10), the American Indian Religious Freedom Act of 1978 (P.L. 95-341), and E.O. 13007, Indian Sacred Sites (61 FR 26771, May 29, 1996).

5d. Provides guidance on intergovernmental review of agency actions that may affect State and local governments, in accordance with E.O. 12372, Intergovernmental Review of Federal programs (July 14, 1982), and 49 CFR part 17, Intergovernmental Review of DOT Programs and Activities (see paragraph 213).

5e. Deletes from the characteristics for extraordinary circumstances those actions that are likely to be highly controversial with respect to availability of adequate relocation housing.

5f. Provides guidance for the option of documenting that a project qualifies for categorical exclusion (see paragraph 305).

5g. Adds new categorical exclusions and revises existing categorical exclusions to accommodate actions that do not significantly affect the environment. The new and revised categorical exclusions are the result of the accumulated environmental experience of the FAA's actions subsequent to the original issuance of FAA's categorical exclusions between 1973 and 1986. The new categorical exclusions are: paragraphs 307c, 307e, 307f, 307h, 307p, 307u, 310c, 310d, 310u, 310w, 310z, 311c, 311d, 311e, 311g, 311k, 311m, 311n and 312b. Categorical exclusions that were substantively amended are: paragraphs 307i, 307k, 307m, 307o, 309a, 309d,

309e, 310a, 310b, 310h, 310i, 310k, and 310p. Some of the amended categorical exclusions are formed by combining two or more categorical exclusions from Order 1050.1D. Applicable actions of the Associate Administrator for Commercial Space Transportation were added to the categorical exclusions under paragraphs 308b, 309c, 309d, 309g, 309h, 310h, 310l, 310q, 310t and 311n. Previous categorical exclusions from Order 1050.1D that were determined to be no longer relevant (outdated; redundant) were not carried forward into Order 1050.1E. The deleted categorical exclusions were (as identified in Order 1050.1D): Appendix 1, paragraphs 5i, 5o, and 5s; Appendix 3, paragraphs 4b and 4h; Appendix 4, paragraph 4e and 4m; Appendix 5, paragraphs 4a, 4b, 4c, 4e and 4f; and Appendix 7, paragraph 4b. Two previously-listed categorical exclusions, one in Order 1050.1D (Appendix 3, paragraph 4a) and the other in Order 5050.4A (paragraph 23b(9)), were determined to be "advisory actions." These are removed from the list of categorical exclusions but are now properly identified as advisory actions in paragraph 301.

5h. Provides formal procedures for adopting draft and final EA's prepared by other agencies (see paragraph 404d), as recommended by CEQ in its Memorandum: Guidance Regarding NEPA Regulations (48 FR 34263, July 28, 1983).

5i. Provides a new optional procedure for preparing records of decision that meet the requirements of NEPA and constitute final agency orders subject to judicial review pursuant to 49 U.S.C. 46110. (see paragraph 408).

5j. Provides a new optional procedure for preparing scoping documents (see paragraph 505).

5k. Provides a new optional procedure for publishing records of decisions (ROD's) in the Federal Register (see paragraph 512e).

5l. Adds a requirement, pursuant to EPA filing guidance, to notify the EPA if the FAA adopts an EIS prepared by another agency (see paragraph 518h).

5m. Adds a new Appendix A, Analyses of Environmental Impact Categories. Appendix A contains an overview of procedures for implementing other applicable environmental laws, regulations, and executive orders in the course of NEPA compliance. Appendix A incorporates and updates Attachment 2 of Change 4 to Order 1050.1D, and amends each impact category to include a significant threshold paragraph where thresholds have been established.

5n. Adds a new subject, "Supplemental Noise Guidance." to the Noise section of Appendix A (see section 14). Supplemental noise analyses are most often used to describe aircraft noise impacts for specific noise-sensitive locations or situations and to assist in the public's understanding of the noise impact. Accordingly, the description should be tailored to enhance understanding of the pertinent facts surrounding the changes. The FAA's selection of supplemental analyses will depend upon the circumstances of each particular case. In some cases, this may be accomplished with a more complete narrative description of the noise events contributing to the yearly day/night average sound level (DNL) contours with additional tables, charts, maps, or metrics. In other cases, supplemental analyses may include the use of metrics

other than DNL. Use of supplemental metrics selected should fit the circumstances. There is no single supplemental methodology that is preferable for all situations and these metrics often do not reflect the magnitude, duration, or frequency of the noise events under study.

5o. Adds a reference to the use of demographic information of the geographic area of potentially significant impacts for purposes of anticipating and responding to public concerns about environmental justice and children in accordance with applicable Executive Orders, directives, and guidance issued by the CEQ and EPA. (see section 16 of Appendix A)

5p. Provides a new procedure for integrating Clean Water Act section 404 permitting requirements and NEPA (see section 18, Appendix A, Analysis of Environmental Impact Categories).

5q. Adds a new Appendix B, FAA Guidance on Third-Party Contracting, with a brief cross-reference in paragraph 204d. This appendix provides guidance on the use of third-party contractors in the preparation of NEPA documents consistent with 40 CFR 1506.5(c). Third-party contracting refers to the preparation of an EIS by a contractor selected by the FAA and under contract to, and paid for by, an applicant. Adds a new Appendix C providing an annotated list of generally applicable executive orders, DOT and FAA orders, memoranda of agreement or understanding, and related CEQ and FAA guidance.

5r. Adds a new Appendix D that describes Environmental Stewardship and Streamlining pursuant to provisions in "Vision100 - Century of Aviation Reauthorization Act" that give review priority to certain projects, require the establishment and management of review timelines, improve and expedite interagency coordination, reduce undue delays, emphasize accountability, and otherwise assist in facilitating environmental reviews. Adds a new Appendix E providing a list of acronyms.

5s. Adds guidance that gives special consideration to the evaluation of the significance of noise impacts on noise-sensitive areas within national parks, national wildlife refuges, and historic sites including traditional cultural properties, and states that Part 150 land use guidelines and the DNL 65 dB threshold of significance for noise do not adequately address the effects of noise on visitors to areas within a national park or national wildlife refuge where other noise is very low and a quiet setting is a generally recognized purpose and attribute.

6. POLICY.

6a. The FAA is responsible for complying with both the procedures and policies of NEPA and other related environmental laws, regulations, and orders applicable to FAA actions. The FAA decisionmaking process shall support public understanding and scrutiny, consider the effect of a proposed action and its alternatives on the quality of the human environment, avoid or minimize adverse effects of the proposed action, and restore and enhance resources and environmental quality. The FAA will integrate NEPA and other environmental reviews and consultations into agency planning processes as early as possible.

6b. The environmental review process outlined in this order will assure that NEPA and other environmental considerations are taken into account. (See Appendix A for these considerations.) EIS's/ROD's and EA's/FONSI's document FAA compliance with these considerations and reflect a thorough review of all relevant environmental issues, using a systematic, interdisciplinary approach.

6c. Funding requirements will be justified and requested in accordance with existing budgetary and fiscal policies. Each FAA program office is responsible for seeking sufficient funds through the budget process to implement provisions of this order.

6d. The new and amended categorical exclusions, and paragraph 211 on reducing paperwork and paragraph 212 on reducing delays are consistent with the FAA's initiative to streamline the NEPA process that was announced by the Administrator in January 2001.

6e. For projects subject to environmental streamlining, the FAA will comply with all environmental protection requirements outlined in this order, will maintain the integrity of the environmental process, and will respect the environmental responsibilities of other agencies. Environmental streamlining will be used to give review priority to certain projects, manage timelines during the review process, improve and expedite interagency coordination, reduce undue delays, and emphasize accountability.

7. EXPLANATORY GUIDANCE.

7a. This order sets forth policy and procedures for implementing NEPA. All FAA offices that have issued supplemental explanatory guidance for implementing NEPA within their programs must update their orders, policy and guidance, as appropriate, to be consistent with this revised order.

7b. A FAA program office may develop explanatory guidance to implement 40 CFR 1507.3 and this order.

(1) Development of Explanatory Guidance. The program office shall consult with AEE and AGC (Airports and Environmental Law Division, AGC-600) in developing explanatory guidance related to this order. Program offices are encouraged to publish notice of availability for comment of its proposed explanatory guidance in the *Federal Register*, and take other steps to seek public input during the development of its explanatory guidance.

(2) Review. The program office shall submit its proposed explanatory guidance to the Office of Environment and Energy (AEE) and the Office of the Chief Counsel (AGC) for a 60-day review period. If the Director of the Office of Environment and Energy (AEE-1) finds the explanatory guidance to be consistent with this order, after joint consultation with the AGC for legal sufficiency, AEE shall notify the program office and the program office may adopt these as its final explanatory guidance.

(3) Notice. If a program office chooses to publish its explanatory guidance in the *Federal Register*, that office shall notify the parties with whom it has consulted and publish availability of that guidance in the *Federal Register*.

8. SCOPE. The NEPA process addresses impacts of Federal actions on the human environment, including noise, socioeconomic, land uses, air quality, and water quality. Chapter 2 of this order presents an overview of the NEPA process. Depending upon the context and potential impacts, NEPA procedures can differ. Chapter 3 of this order addresses those types of FAA actions that do not normally require preparation of an EA or EIS, called categorical exclusions (see paragraphs 303 and 307-312) absent extraordinary circumstances (see paragraph 304). Chapters 4 and 5 of this order outline the processes for preparing EA's and EIS's. These procedures apply to classes of FAA actions that have or may have a significant impact on the human environment. Appendix A, Analysis of Environmental Impact Categories, presents, for each environmental impact category, brief descriptions of statutory and regulatory requirements and a list of agencies with specialized expertise or legal jurisdiction. Appendix B provides additional FAA guidance on third-party contracting. Appendix C provides an annotated list of generally applicable executive orders, DOT and FAA orders, memoranda of agreement or understanding, and related CEQ and FAA guidance. Appendix D provides a summary of the FAA Reauthorization Act, "Vision 100 -- Century of Aviation Reauthorization Act," signed December 12, 2003. Appendix E provides a list of acronyms.

9. RELATION TO CEQ REGULATIONS. This order implements the mandate of NEPA, as defined and discussed in the CEQ regulations, within the programs of the FAA. The order is not a substitute for the regulations promulgated by CEQ, rather, it supplements the CEQ regulations by applying them to FAA programs. Therefore, all program offices and administration offices shall comply with both the CEQ regulations and the provisions of this order.

10. AUTHORITY AND PROCEDURE FOR ISSUING CHANGES TO THIS ORDER.

10a. When the Administrator has not specifically reserved authority to make changes or revisions, the Director of the Office of Environment and Energy (AEE-1) may issue changes or revisions to this order. When a change or revision may affect an office or offices, AEE must formally coordinate with that office to afford it an opportunity to review and discuss the proposed change.

(1) When a change or revision is substantial AEE must, in addition to the formal clearance procedures prescribed in Order 1320.1D, formally coordinate with the Office of the Chief Counsel (AGC), the Office of the Assistant Secretary for Transportation Policy (P-1) and the Office of the General Counsel (C-1), consult with CEQ and then publish the proposed change or revision in the *Federal Register* for public comment. After receiving all required FAA and DOT concurrences and after a finding of conformity is made by CEQ in accordance with 40 CFR 1507.3(a), the final change or revision may be published in the *Federal Register* and implemented.

10b. Each program office may submit to AEE proposed changes or revisions to this order. The Associate or Assistant Administrator for the requesting program office must provide AEE with a memorandum describing the proposed change, a detailed justification for the change, and comments from other program offices if the proposed changes or revisions affect them. AEE, in cooperation with the requesting office, will process the proposed change or revision in accordance with the procedure prescribed in paragraph 10a.

11. DEFINITIONS.

11a. The terminology used in the CEQ regulations (see 40 CFR part 1508) and Title 49 of the United States Code is applicable.

11b. In addition, this paragraph defines basic terms used throughout this order, as follows:

(1) Applicant. A person, entity, organization, or government agency seeking FAA approval of a major Federal action. Examples include, but are not limited to, airport sponsors, airlines, or commercial launch license applicants.

(2) Approving Official. The FAA official with authority to approve findings of no significant impact (FONSI's) or environmental impact statements (EIS's) (see FAA Order 1100.154A, Delegation of Authority, which provides delegation of authority to agency officials to sign environmental documents).

(3) Decisionmaker. The FAA official with authority to approve a record of decision (ROD) or other types of formal decision documents for the agency (see FAA Order 1100.154A, Delegation of Authority, which provides delegation of authority to agency officials to sign environmental documents).

(4) Environmental Due Diligence Audit (EDDA). A systematic program for conducting environmental investigations of real property transfers. The purpose of the EDDA program is to help minimize environmental liabilities associated with such transfers. An EDDA is prepared using historical record searches, photographic interpretation, and site inspections to determine the likelihood of environmental contamination prior to real property transfers (acquisition by, or transfer to or from, the FAA). Where an EDDA has been determined necessary by the FAA, it will be incorporated by reference (see FAA Order 1050.19a, Environmental Due Diligence Audits in the Conduct of FAA Real Property Transactions, for further information on EDDA's).

(5) Environmental Studies. The investigation of potential environmental impacts to assist in determining the type of environmental review (see, e.g., 23 CFR 7.107(a)).

(6) Human Environment. The natural and physical environment and the relationship of people with that environment (see 40 CFR 1508.14).

(7) Launch Facility. The location on Earth from which a launch takes place, as defined in the terms and conditions of a license issued by the Secretary of Transportation, or designee, and the necessary facilities at that location to support the launch of commercial space launch vehicles.

(8) Noise Sensitive Area. An area where noise interferes with normal activities associated with its use. Normally, noise sensitive areas include residential, educational, health, and religious structures and sites, and parks, recreational areas (including areas with wilderness characteristics), wildlife refuges, and cultural and historical sites. For example, in the context of noise from airplanes and helicopters, noise sensitive areas include such areas within the Day Night Level (DNL) 65 noise contour. Individual, isolated, residential structures may be considered compatible within the 65 DNL noise contour where the primary use of land is agricultural and adequate noise attenuation is provided. Also, transient residential use such as motels should be considered compatible within the 65 DNL noise contour where adequate noise attenuation is provided. A site that is unacceptable for outside use may be compatible for use inside of a structure, provided adequate noise attenuation features are built into that structure. (See table 1 on land use in section 4 of Appendix A of this order; section 14 on noise in Appendix A; and 14 CFR part 150, Airport Noise Planning, Land Use Compatibility Guidelines). The FAA recognizes that there are settings where the 65 DNL standard may not apply. In these areas, the responsible FAA official will determine the appropriate noise assessment criteria based on specific uses in that area. (See also section 6.2i of Appendix A of this order for further guidance.) In the context of launch vehicle operations, noise sensitive areas may include such sites within approximately 40 miles of the launch site for launches of very large rockets, whereas noise sensitive areas may include such sites within approximately 2 miles of the launch site for launches of small rockets. In the context of facilities and equipment, such as emergency generators or explosives firing ranges, but not including aircraft, noise sensitive areas may include such sites in the immediate vicinity of operations, pursuant to the Noise Control Act of 1972, (See State and local ordinances, which may be used as guidelines for evaluating noise impacts from operation of such facilities and equipment.)

(9) Responsible FAA Official. The FAA employee designated with overall responsibility to furnish guidance and participate in the preparation of NEPA documents, to evaluate the documents, and to take responsibility for the scope and content of the documents (see FAA Order 1100.154A, Delegation of Authority which provides delegation of authority to agency officials to sign environmental documents).

(10) Tribe. An American Indian or Alaska Native Tribe, Band, Nation, Pueblo, Village, or Community the Secretary of the Interior recognizes as an Indian Tribe under the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a. A Federally Recognized Tribe is eligible for the programs, services, and other government-to-government relationships established by the United States for Indians because of their status as Indians and tribes. Under the Federally Recognized Indian Tribe List Act, the Department of the Interior, Bureau of Indian Affairs, annually publishes a list of Federally Recognized Tribes in the Federal Register and maintains this list on its web site. The term “tribe” may also refer to State-recognized tribes

under specific authorities for certain DOT programs, especially related to surface transportation that may be associated with a particular FAA project.

12. APPLICABILITY. The provisions of this order and the CEQ regulations apply to actions directly undertaken by the FAA and where the FAA has sufficient control and responsibility to condition the license or project approval of a non-Federal entity. The requirements in this order apply to, but are not limited to, the following: all grants, loans, contracts, leases, construction, research activities, rulemaking and regulatory actions, certifications, licensing, permits, plans submitted to the FAA by state and local agencies which require FAA approval, and legislation proposed by the FAA. Exceptions to these requirements are listed in chapter 2. The procedures in this order shall apply to the fullest extent practicable to ongoing activities and environmental documents begun before the effective date, except that this order does not apply to decisions made and final environmental documents issued prior to the effective date of this order.

13.-199. RESERVED